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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 18, 2003

Case Number: TSO-0075

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. Background

The individual is employed by a Department of Energy (DOE) contractor in a position for which a security clearance is required. On June 28, 2002, he was arrested for Driving While Intoxicated (DWI). Acting on this information, the local security office initiated an investigation of the individual. As part of this investigation, he was interviewed by a security specialist. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for an agency-sponsored evaluation.

The Manager of the local security office reviewed the results of this investigation and determined that derogatory information existed that cast into doubt the individual's continued eligibility for a security clearance. The Manager informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his continued eligibility for access authorization. The individual requested a hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

II. Statement of Derogatory Information

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710 *et seq.* Paragraph (j) defines as derogatory information indicating that the individual has been, or is "a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for the security concerns set forth in this paragraph, the Notification Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from alcohol abuse, and that there is insufficient evidence of rehabilitation or reformation. Although the individual claimed to have completely abstained from alcohol use for three months as of the date of the DOE psychiatrist's evaluation, the Letter cites the DOE psychiatrist's finding that the individual's blood tests revealed elevated liver enzymes, and his conclusion that the levels are consistent with those of someone who continues to abuse alcohol. The Letter also refers to the individual's statements during two PSIs that he began consuming alcohol in high school and probably drank to intoxication every weekend, and that he has consumed alcohol "to the point of blacking out." Attachment to Notification Letter at 1.

Paragraph (l) pertains to information indicating that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). Under this paragraph, the Letter refers to the individual's five arrests or citations for underage drinking, DWI, and failure to pay the fines incurred as a result of the individual's underage drinking arrests, and to an alleged inconsistency between statements that the individual made during his 2002 and 1996 PSIs.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE

that restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995)(*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that his clearance should therefore not be restored.

IV. THE HEARING

The hearing in this matter began on April 15 and was reconvened on May 5, 2004. A security analyst and the DOE psychiatrist testified for the DOE. Testifying for the individual was a forensic pathologist, a clinical psychologist, two of the individual’s former supervisors, the individual’s brother and wife, and the individual himself.

The DOE psychiatrist testified about his evaluation of the individual. As part of his evaluation, he reviewed the individual’s personnel security file, and he stated that this information raised “a number of [alcohol-related] issues that concerned me.” Hearing Transcript (Tr.) at 85. The first such issue was an alleged family history of alcohol abuse or dependence, based on information obtained from the individual during his 1996 PSI.² The DOE psychiatrist also said that he was disturbed that the individual began drinking at an early age, and that he had drunk to the point of passing out. *Id.*³ Another item of concern was the individual’s admission that he had had a beer after his uncle’s funeral in July 2002, shortly after his June 2002 DWI arrest. “For many people, after they get a DWI,” he explained, “it’s a wake-up call with which they realize, ‘This is causing severe problems to me, I’ve got to stop drinking.’” Tr. at 87.

The DOE psychiatrist then discussed the results of the individual’s blood tests. He stated that the individual’s levels of gamma-glutamyltransferase (GGT), a liver enzyme, were slightly elevated. This indicated that something was damaging the individual’s liver, he testified, and the most likely culprit was excessive alcohol use. Tr. at 98-101. He then referred to a quotation that he gave in his report from the Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR) indicating that “70 percent of the time people that have abnormally elevated

² Security Analyst: Do you have any relatives that have had any problems with alcohol?

Individual: Um, my dad used to drink. He’s . . . quit for like . . . six or seven years already My brother used to drink, too, but . . . he quit since like four or five years ago, too.

Security Analyst: Would you say that they’re alcoholics, your brother or your dad?

Individual: Now?

Security Analyst: No, well, once you’re an alcoholic whether you’re drinking or not –

Individual: Hm.

Security Analyst: . . . either you’re a recovering alcoholic or you’re not.

Individual: Hm.

Security Analyst: --so, . . . would you say that your . . .

Individual: Yeah, I guess I would call ‘em recovering alcoholics.

December 16, 1996 PSI at 26-27.

³The Notification Letter erroneously states that the individual admitted having consumed alcohol to the point of “blacking out.”

gamma-GT levels, they are putting away on the order of eight or more drinks a day.” Tr. at 103. ⁴ Later, the DOE psychiatrist testified that he did not believe that the individual drank eight drinks a day on a regular basis, but that he instead believes that the individual is a “binge drinker.” Tr. at 147, 246.

The DOE psychiatrist then discussed the manner in which he applied the DSM-IV-TR’s diagnostic criteria for alcohol abuse to the individual. ⁵ He stated that the individual has “a maladaptive pattern of alcohol use” which has led to “clinically significant impairment. . . . he’s misusing alcohol, and it’s causing some significant problems in his life, basically.” Tr. at 105. According to the DOE psychiatrist, these problems started with the individual’s two citations for underage drinking and his failure to pay the fines associated with those citations in a timely manner. Tr. at 106. Then, after the individual’s December 1996 PSI, which focused on his alcohol use in general and these citations in particular, the individual was arrested in 2002 for

⁴“Associated Laboratory Findings: One sensitive laboratory indicator of heavy drinking is an elevation (>30 units) of gamma-glutamyltransferase (GGT). This finding may be the only laboratory abnormality. At least 70 percent of the individuals with a high GGT level are persistent heavy drinkers (i.e., consuming eight or more drinks daily on a regular basis.” DSM-IV-TR at 218.

⁵ The DSM-IV-TR defines alcohol abuse as being

A maladaptive pattern of alcohol use leading to clinically significant impairment or distress, as manifested by one or more of the following, occurring within a twelve-month period:

1. Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to alcohol use; alcohol related absences, suspensions, or expulsions from schools, neglected children or household)
2. Recurrent alcohol use in situations in which it is physically hazardous (e.g. driving an automobile or operating a machine when impaired by alcohol use)
3. Recurrent alcohol-related legal problems (e.g. arrests for alcohol-related disorderly conduct)

In his report, the DOE psychiatrist found that the individual fulfilled criterion one. DOE psychiatrist’s report at 6. However, at the hearing the DOE psychiatrist appeared to recede from that finding, stating that “I think I’m on iffy ground on diagnostic criteria number one,” Tr. at 114, and that while he could make a reasoned argument for the application of this criterion, “I think, technically, I would drop criterion number one as being fulfilled” Tr. at 115.

I agree with the DOE psychiatrist that the record in this matter does not adequately support the application of this criterion to the individual. There is sufficient evidence in the record to support the existence of only one instance of alcohol use resulting in a failure to fulfill a major role obligation: the individual’s 2002 DWI arrest. Therefore, the requirement of recurrent use is not satisfied. The fourth criterion for alcohol abuse, continued alcohol use despite having persistent or recurrent social or interpersonal problems caused by that use, was not relied on by the DOE psychiatrist in making his diagnosis and is not at issue in this proceeding.

DWI. Coming, as it did, after the DOE's concerns about excessive alcohol use had been communicated to the individual during this PSI, the DOE psychiatrist said that the DWI was "clinically more significant , in that it looks like this person is not able to control his drinking . . . or to appropriately avoid the problems that are starting to pile up." Tr. at 108. More specifically, the DOE psychiatrist based his application of criterion two, recurrent alcohol use in situations in which it is physically hazardous, to the individual on his 2002 DWI and on statements that he made during the 2002 PSI, which the DOE psychiatrist interpreted as being an admission that, prior to the DWI, he would drink and drive "about once every quarter." Tr. at 113, 139.

With regard to criterion three, recurrent alcohol-related legal problems, the DOE psychiatrist relied on the individual's citations for underage drinking in 1994 and 1995 and his 2002 DWI arrest. He then acknowledged that the individual "does not fit [the] criteria for recurrence, meaning within the 12-month time frame of the recurrent" alcohol-related legal problems. Tr. at 112. However, he went on to explain why he believed criterion three still applied to the individual. A literal application of the 12 month time frame, he testified, could lead to the absurd result that someone with 8 DWI arrests in 10 years could not be considered an alcohol abuser under criterion three if none of the arrests occurred within twelve months of the others. Tr. at 110. He pointed out that the DSM-IV-TR cautions against a mechanistic application of the criteria, and that the individual's three alcohol-related arrests or citations, with the last one occurring after the individual had been apprised of the seriousness of such an event, justified a finding of alcohol abuse under criterion 3. Tr. at 169-170. The DOE psychiatrist also testified about what the individual would have to do to demonstrate adequate rehabilitation or reformation from alcohol abuse. Specifically, he recommended participation in a treatment program such as Alcoholics Anonymous (AA) and abstinence from alcohol use for a period of at least one year. Tr. at 177-118.

The individual's clinical psychologist then testified. He said that as a part of his evaluation, he interviewed the individual for two hours and administered two psychological tests, the Personality Assessment Inventory (PAI) and the Substance Abuse Subtle Screening Inventory, Third Edition (SASSI). The results of these tests, he stated, indicated that there was a low probability that the individual was suffering from any substance dependence disorder. Tr. at 185. As a part of his interview, the psychologist reviewed the individual's history of alcohol use. With regard to the individual's citations as a minor, the psychologist testified that they did not necessarily indicate an alcohol abuse problem. Tr. at 183. In fact, he stated that "it is conceivable that he may not have even had anything to drink," on those occasions and "he was certainly not arrested for anything other than being a minor in possession." Tr. at 184. ⁶ The psychologist was also asked about the individual's alleged family history of alcohol problems that was discussed during his PSI. The psychologist replied that the individual did not report a family history of alcoholism to him. While he said that the individual admitted that his brother and father both drank alcohol on occasion, the individual did not believe that they were problem drinkers. *Id.*

⁶These assertions are inconsistent with the individual's own statements. During his 1996 PSI, the individual admitted that he drank approximately "four beers, five beers" prior to his first citation, 1996 PSI at 11, and "five or six beers" prior to his second. 1996 PSI at 14. Furthermore, during his 2002 PSI, the individual stated that his first citation was "for drinking under the age" of majority. 2002 PSI at 23.

The psychologist then discussed his areas of disagreement with the DOE psychiatrist's diagnosis. As previously stated, the DOE psychiatrist based his finding of alcohol abuse under criterion two largely on statements made by the individual during the 2002 PSI, which the DOE psychiatrist interpreted as being an admission that, before the 2002 DWI, the individual would drink and drive on a quarterly basis. As an initial matter, the individual's psychologist questioned the DOE psychiatrist's interpretation. Furthermore, even if the individual did drink and then drive, the individual's psychologist continued, "we don't know how much he had to drink, over how long a period of time he had to drink it, and that's very important. . . . [I]t is entirely possible for a person to drink any number of beers and have a blood alcohol concentration of zero, assuming that they did it over a long enough period of time." Tr. at 190-191. Accordingly, the psychologist stated that the only proven instance of the individual drinking alcohol in a situation in which it was physically hazardous to do so was during the events leading up to his 2002 DWI arrest, and that this single incident does not satisfy the "recurrence" requirement of criterion two. Tr. at 193-194. The individual's psychologist also concluded that because the individual's alcohol-related legal problems did not recur within the prescribed 12 month period, criterion three was also inapplicable to the individual. While acknowledging that the DSM-IV-TR provides that the criteria are not to be applied in "cookbook" fashion by the diagnostician, Tr. at 187, the psychologist said that "in a situation like this one, . . . because of the importance of [the] diagnosis, as it relates to [the individual's] continued employability for the company that he's worked for, . . . the best way to do this is to follow it word for word, does he meet these criteria or does he not, and that was the approach that I took" Tr. at 188. Accordingly, he concluded that the individual is "not diagnosable as an individual suffering from alcohol abuse." Tr. at 193.

The forensic pathologist then testified concerning the results of the laboratory tests of the individual that were ordered by the DOE psychiatrist. He specifically took issue with the DOE psychiatrist's conclusion that because the individual's Gamma-Glutamyltransferase (GGT) liver enzyme was slightly elevated, this strongly suggests, but does not prove, that the individual was consuming excessive amounts of alcohol at the time of the test.⁷ He stated that while chronic alcoholism is a common cause for an elevated GGT, there are other reasons for why one might see a slight elevation in this liver enzyme. "It's important to realize that we're dealing with very small variations in instruments," he testified, "and some of those would include the instrument itself, just intra-individual variation. When you test the same person over several times, you can actually see variations in those values, one or two point differences." Tr. at 211. He added that other factors accounting for an elevated GGT would include whether the test subject was a smoker or a member of certain ethnic groups, or whether he suffered from hepatitis. Tr. at 211-212, 215. The pathologist also noted that if the individual was a "binge drinker," as was suspected by the DOE psychiatrist, Tr. at 147, the individual's Aspartate Aminotransferase (AST) liver enzyme reading would also be elevated. Tr. at 214. The individual's AST reading (29) was within the "normal" reference range (3-35).

The forensic pathologist then testified about the discussion of elevated GGT levels and their relation to alcohol use set forth in the DSM-IV-TR. The DSM-IV-TR states that one sensitive laboratory indicator of heavy drinking is an elevation (of greater than 30 "units") of GGT, and

⁷ The "normal" reference range for the laboratory that the DOE psychiatrist used was a GGT reading of 5-40. The individual's GGT level was measured at 42.

that at least 70 percent of individuals with a high GGT level are persistent heavy drinkers. DSM-IV-TR at 218. The forensic pathologist found these statements to be ambiguous, and concluded that they should not be used to infer that the individual was continuing to abuse alcohol based on the slight GGT elevation detected in the tests ordered by the DOE psychiatrist. The pathologist specifically found the meaning of the phrase “elevation of greater than 30 units” to be unclear. It could be interpreted to mean, he said, that any GGT reading in excess of 30 should be considered a sign of alcohol abuse. Tr. at 216. However, this would lead to the anomalous result that a GGT reading of 32, as measured by the laboratory that the DOE psychiatrist used, would be elevated despite the fact that the laboratory’s stated “normal” reference range is five to 40. The other possible interpretation, and the one that he favored, is that it could mean an elevation of 30 units above the reference range for a given laboratory. Under this interpretation, if the relevant reference range is from five to 40, a GGT measurement of 70 would be indicative of alcohol abuse. Tr. at 217. The pathologist stated that this would be more consistent with the literature that he has read concerning the effect of alcohol abuse on GGT levels. Tr. at 217-218. While he acknowledged that excessive alcohol use is the most common cause of an elevated GGT, Tr. at 232, he concluded that the individual’s elevation was too slight to be significant. Tr. at 229.

The individual also testified on his own behalf. He stated that his brother and father were “social drinkers,” but not alcoholics. Tr. at 331-333. In explaining his statement during the 1996 PSI that they were “recovering alcoholics,” he said “After I got done talking to [the security analyst] about people that are alcoholics . . . , I walked out of there thinking that an alcoholic was a person that drank maybe three times a year, four times a year, and so right away I assumed . . . my dad and my brother are alcoholics.” Tr. at 332. However, he later realized that this would “make everybody in the world an alcoholic, the way the DOE person made it out to be.” *Id.*

The individual then discussed his drinking habits during the time leading up to his 2002 DWI arrest. Although he did not believe that he had a drinking problem, after he met the woman who was to become his wife, he began to drink less. He attributed this change to less “hanging out with my friends and being with my [future] wife a lot more.” Tr. at 336. He added that he would occasionally drink after work, but that he would not become intoxicated, and there was never a time when he consumed eight bottles of beer every day. Tr. at 336-337. The individual also addressed the statements that he made during the 2002 PSI, which the DOE psychiatrist interpreted as being an admission that, prior to his 2002 arrest, the individual drank and drove on a quarterly basis. He said that, on those occasions when he would drive after going out with his friends and drinking, he did not believe he was intoxicated or that his driving ability was impaired. Tr. at 345. His statement during the PSI in question that these occasions happened “probably quarterly” was prompted by the security analyst’s question, he added, and if the question had been whether he drank and drove annually instead of quarterly, he probably would have answered in the affirmative. Tr. at 346. He testified that he does not typically drink to intoxication, and that his level of alcohol consumption on the evening of his arrest was an aberration. Tr. at 346-347. Accordingly, he does not consider himself to be a “binge drinker.”⁸ Tr. at 347.

⁸ He defined a binge drinker as being somebody who “keeps on drinking until they don’t know what the heck is going on anymore.” Tr. at 347.

Next, the individual testified about his 2002 arrest. He explained that he had just finished building his home, his wife was pregnant, and he had just been promoted at work, so he went out to celebrate with his friends. After drinking from approximately 4:30 p.m. to midnight, he went to a local restaurant to get something to eat, and was arrested. Tr. at 338. Since the arrest, he said, he has only consumed alcohol on one occasion—one beer after his uncle’s funeral in July 2002. He then asked his wife to drive them to their hotel. Tr. at 338. The individual also stated that, since the first day of the hearing, he had attended “a couple of Alcoholics Anonymous (AA) meetings, just to see what it was about . . .”⁹ He added that if it was necessary to keep his job, he would continue with some form of counseling. Tr. at 341.

The individual’s wife and brother also testified. His wife testified that the individual is a good husband and provider, and that he has not consumed any alcohol since the DWI arrest, except for the one beer that he had after his uncle’s funeral. Tr. at 365-368. She added that she drove the two of them to their hotel afterwards. Tr. at 368. The individual’s brother stated that, to his knowledge, the individual does not have a drinking problem, that he has not seen his brother drink alcohol in the last year, and that he has never seen his brother drive while impaired by alcohol. Tr. at 309. He also said that neither he nor his father has had a drinking problem. Tr. at 305, 310. When asked why he stopped drinking, the individual’s brother stated that “with the way things are today, it’s too much of a hassle to even take a chance on having to drink and do anything.” Tr. at 306. Finally, two of the individual’s former supervisors testified that the individual was a good and reliable employee and an honest person who had shown no signs of alcohol abuse. Tr. at 316-329.

V. ANALYSIS

After reviewing this and other testimony offered at the hearing, and the record as a whole, I find that the individual has failed to adequately rebut the derogatory information set forth in the Notification Letter. With regard to the DOE’s security concerns under paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material, I concur with the DOE psychiatrist’s conclusion that the individual suffers from alcohol abuse with inadequate evidence of reformation or rehabilitation. As previously stated, the DOE psychiatrist’s diagnosis of alcohol abuse was based primarily on his conclusion that the individual satisfied criteria two and three of the DSM-IV-TR standards.

The DOE psychiatrist’s finding as to criterion two, recurrent alcohol use in situations in which it is physically hazardous, was based on the individual’s 2002 DWI arrest and information that he provided during the 2002 PSI. During that interview, the individual was asked about his behavior on the night of his DWI arrest:

Security Analyst: But how did it, how do you, how do you basically justify yourself, you know, and you tell me that you, you felt like you’re intoxicated that night, that you get in your –

Individual: Yeah.

Security Analyst: –vehicle and –

⁹ The individual testified on May 5, 2004, the second day of the hearing.

Individual: I don't know why I did. I thought maybe I could go eat for a little bit, relax and then drive home. All I know is it's never gonna happen again. That's about it.

Security Analyst: Have you done this in the past, where you felt that way and still –

Individual: I probably have done that a few times.

Security Analyst: What's a few?

Individual: I would say, um, I've had, there's been a few times I went to the bar with my friends and drove home from after the bar.

Security Analyst: And what was a few?

Individual: I would say probably, uh, that's a good question. Uh –

Security Analyst: I mean, have you done it on a weekly basis –

Individual: No.

Security Analyst: –monthly basis, quarterly, every three months?

Individual: Probably quarterly.

Security Analyst: So about –

Individual: Because if I usually go out, it's usually, uh, with my wife. There's been a few times that I've gone out with, just my friends and me. And the wife drives.

2002 PSI at 15-16. The individual argues that this information does not form a sufficient basis for the application of criterion two. As an initial matter, the individual testified that he was led into responding that he would drink and then drive on a quarterly basis by the analyst's questions, and that if the analyst had asked if he drank and drove on an annual basis, he would have responded in the affirmative. Tr. at 346. Furthermore, the individual argues that it is unclear whether he, his wife, or perhaps even his friends would customarily drive the individual home after these instances. Finally, the individual cites the testimony of his psychologist that no conclusion as to alcohol abuse can be drawn from these occurrences because key information is missing as to the number of drinks the individual had and the period of time during which he consumed them.

I am not persuaded by any of these contentions. First, I find nothing in the questions asked of the individual during the 2002 PSI that would cause me to doubt the reliability of the individual's answers. The individual was given several alternate choices by the security analyst as to the frequency with which he would go drinking with his friends, and he responded that this was a "probably quarterly" occurrence. 2002 PSI at 16. In fact, later in this PSI, the individual indicated that he would go drinking with his friends more often than once every three months.

Security Analyst: What's your . . . common or current use of alcohol? In other words, is eleven beers [on the night of the individual's 2002 DWI arrest] common or is that the exception to the rule for you?

Individual: That's probably the exception to the rule.

Security Analyst: What would be your normal consumption?

Individual: Going out with friends and stuff like that, probably six beers, seven beers.

Security Analyst: And how often is that?

Individual: Maybe once, twice a month. . . I did a little bit more in June. We had . . . my cousin's graduation, my son's birthday and then it was my . . . cousin's wedding, special occasions.

2002 PSI at 18-19

Second, it is clear from the information provided in the 2002 PSI and at the hearing that it was the individual who drove after consuming alcohol with his friends. As previously set forth, the individual stated during the PSI that "there's been a few times *I went to the bar with my friends and drove home from after the bar.*" 2002 PSI at 15 (italics added). The individual's statements later in the PSI that if he goes out, "it's usually . . . with my wife. There's been a few times that I've gone out with, just my friends and me. And the wife drives," are somewhat ambiguous, but when considered in light of the individual's earlier statements during the PSI and his testimony at the hearing, it is clear that the individual was talking about two separate sets of circumstances: occasions during which the individual would go out with his wife, and his wife would drive them home, and occasions during which he would go out with his friends, unattended by his wife. When asked at the hearing what he meant by these statements, the individual replied

Every once in awhile we'd go out and – me and my wife. Sometimes her work would have something going on . . . and we'd go, and they'd have dinner or something like that, and a lot of times her old company used to buy a lot of food . . . and everybody [would] go eat and stuff, and I had a few beers then and she would drive home.

Tr. at 346.

Finally, I disagree with the individual's psychologist's conclusion that these instances of drinking and then driving cannot be considered indicative of alcohol abuse because the number of drinks the individual would consume and the period of time during which he would consume them are both unknown. As an initial matter, contrary to the psychologist's assertion, the individual admitted to drinking "probably six beers, seven beers" during these outings with his friends. 2002 PSI at 18. Moreover, while it is true that the exact period of time over which these beers were customarily consumed is unknown, I believe it likely that the individual drove while in an impaired state on at least some of these occasions. During the 2002 PSI, the security analyst asked the individual about his definition of the word "intoxication." He replied that intoxication was when "you can't drive, you feel real impaired. You can't, if you have more than four beers, [you] definitely, shouldn't be driving" 2002 PSI at 14. The analyst then asked the individual how he could justify driving on the night of his DWI arrest even though he felt that he was intoxicated, and whether he had previously driven when he felt "that way," *i.e.*, intoxicated. The individual replied that he "probably [had] done that a few times." 2002 PSI at 15. I recognize that at the hearing, the individual testified that he did not feel that he was intoxicated or that his driving ability was impaired by alcohol at these times. Tr. at 345. However, I attribute greater weight to the individual's statements during the 2002 PSI, given, as they were, much closer in time to these occurrences than was the testimony at the hearing.

In sum, the individual was arrested for DWI in June 2002. Prior to that time, he would drive on at least a quarterly basis, and perhaps as often as once or twice a month, after consuming six or

seven beers, when, by his own admission, “if you have more than four beers,” you shouldn’t be driving. 2002 PSI at 15. I agree with the DOE psychiatrist’s conclusion that the individual warrants a diagnosis of alcohol abuse under criterion two.

The DOE psychologist based his application of criterion three, recurrent alcohol-related legal problems, to the individual on the individual’s citations for underage drinking in 1994 and 1995 and on the 2002 DWI. The individual’s psychologist correctly points out the individual’s legal problems did not recur within the 12 month period prescribed by the DSM-IV-TR. While he acknowledges that the DSM-IV-TR allows for some latitude in making diagnoses, he asserts that when a person’s livelihood is potentially at stake, as is the case here, the diagnostic criteria should be followed “word for word.” Tr. at 188. Consequently, he concluded that criterion three was inapplicable to the individual.

I find the psychologist’s stated position to be troubling. As an initial matter, he does not cite any authority in support of his position that the diagnostic criteria should be interpreted differently based upon the possible consequences of that diagnosis to the individual. Furthermore, I believe that a diagnosis should be based upon the application of a clinician’s expertise and experience during the patient evaluation process, and not on whether a certain diagnosis might have a negative impact on a patient’s life. Finally, the psychologist’s position implies that an individual’s interest in maintaining his clearance is more important than the government’s interest in protecting national security. In fact, the DOE’s personnel security regulations make it clear that the opposite is true. Section 710.7 requires that I resolve any doubt about an individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7.

In this case, the DOE psychiatrist determined that the individual’s three alcohol-related citations or arrests within an eight year period, with the last occurring after the individual had been apprised of the seriousness of such infractions by the DOE, justified a departure from the 12 month standard for recurrence set forth in the DSM-IV-TR. This determination is adequately supported by the record, and for the reasons set forth above, I accord greater weight to the DOE psychiatrist’s diagnosis than I do to the opinion of the individual’s psychologist.

A finding of alcohol abuse does not end my inquiry into this matter. I must now determine whether the individual has shown adequate reformation or rehabilitation from this condition. For the reasons that follow, I conclude that he has not done so. In his report, the DOE psychiatrist said that, in order to demonstrate reformation or rehabilitation, the individual would have to obtain “outpatient treatment of moderate intensity,” such as AA “a few times a week.” This treatment should include “maintenance of sobriety,” he added, and should continue for “about one year.” DOE psychiatrist’s report at 8. Although I believe, as explained below, that the individual has maintained his sobriety for the requisite period of time, he has not obtained outpatient treatment that is sufficient to convince me of his reformation or rehabilitation.

In concluding that the individual has maintained his sobriety since July 2002, I carefully considered the DOE psychiatrist’s statement that the individual’s slightly elevated GGT at the time of his examination in October 2002 strongly suggests, but does not prove, that the individual “currently is consuming alcohol excessively enough to cause mild liver damage.” DOE psychiatrist’s report at 6. However, I found this evidence to be outweighed by the

testimony of the individual and his wife and brother that the individual had not had any alcohol since July 2002, by the largely un rebutted testimony of the forensic pathologist concerning the reliability of the individual's GGT reading as an indicator of alcohol abuse, and by the results of laboratory tests performed approximately six months later which show no signs of continuing abuse.

However, as the DOE psychiatrist made clear at the hearing, outpatient therapy of at least a year's duration is also an important part of his recommendation for rehabilitation or reformation. He said that "I don't think there is currently adequate evidence of rehabilitation and reformation, even though it's been a year and a half [since the individual's last drink], given the fact that he has not entered into any treatment" Tr. at 122.

This testimony was given during the first part of the hearing on April 15, 2004. When the hearing was reconvened on May 5, 2004, the individual testified that since the last session, he had attended "a couple of AA meetings, just to see what it was about" Tr. at 341. However, he indicated that he does not believe that he has an alcohol abuse problem. Tr. at 355. This falls far short of the standard recommended by the DOE psychiatrist, and I believe that it demonstrates an insufficient understanding of the severity of the individual's drinking problem. In fact, without a serious and continuing commitment to treatment, I fear that, once the glare of this proceeding has faded, the individual will eventually return to his pattern of periodically drinking and then driving. The individual has not shown sufficient evidence of rehabilitation or reformation from alcohol abuse.

I also find that the individual has failed to adequately mitigate the DOE's security concerns under paragraph (I). As set forth above, this paragraph concerns information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security. Although I find no convincing evidence that the individual would be subject to pressure, coercion, exploitation or duress, I believe that the individual's past consumption of alcohol raises serious doubts about his reliability. Consistency of judgment is a key element of this trait, and the individual has repeatedly demonstrated poor judgment concerning alcohol use, first in drinking while under the legal age, and then more recently in drinking and then driving. Although the individual has recently been able to abstain from drinking, as set forth above, I am not at all confident that he will be able to maintain his sobriety and avoid future alcohol-related legal problems in the absence of a strong and continuing commitment to treatment. I do not see sufficient evidence of such a commitment.¹⁰

¹⁰The Notification Letter also cites an alleged inconsistency between information provided by the individual during his 1996 and 2002 PSIs as a security concern under paragraph (I). Specifically, the Letter states that during the 1996 PSI, the individual admitted that his girlfriend expressed a concern with his alcohol consumption, but that during the 2002 PSI, he said that no one had ever told him that they had a concern about his alcohol use. The individual's purported statement that no one had ever expressed a concern about his drinking is contained in the following passage from the 2002 PSI.

Security Analyst: Okay. Has ever, has, have you ever been told or have you ever sought counseling or counseling or treatment for alcohol use?

Individual: No.

VI. CONCLUSION

For the reasons set forth above, I conclude that the individual has been diagnosed by a psychiatrist as suffering from alcohol abuse within the meaning of section 710.8, paragraph (j) of the DOE's Personnel Security Regulations, and that he has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy within the meaning of section 710.8, paragraph (l) of those regulations. I find insufficient evidence of rehabilitation or reformation, and I conclude that the individual has failed to demonstrate that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's access authorization should not be restored at this time.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: August 23, 2004

(...continued)

2002 PSI at 24. The question, as set forth in the transcript, is so garbled that it is impossible to determine, with any degree of certainty, exactly what is being asked. If anything, the question appears to be about whether the individual had, at that time, sought counseling or treatment for alcohol use, to which the individual answered, truthfully, "No." I therefore perceive no inconsistency between the two PSIs, and the Notification Letter's allegation to the contrary is unfounded.